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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,745

07/06/2006

Reinhold Hermann Stammel

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11/16/2009

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COLUMBUS, IN 47201

EXAMINER

AVERY, BRIDGET D

ART UNIT

PAPER NUMBER

3618

MAIL DATE

DELIVERY MODE

11/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,745	<b>Applicant(s)</b> STAMMEL ET AL.	
	<b>Examiner</b> BRIDGET AVERY	<b>Art Unit</b> 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

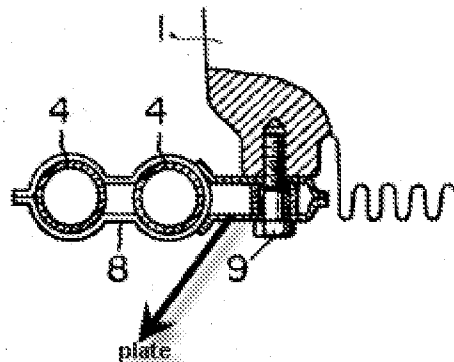
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4, 11, 13, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimada (US Patent 3,942,599).

Shimada teaches a motor vehicle including a combustion engine (1), a gearbox, an exhaust system (2, 8) and an exhaust system bracket (21a) for fastening the exhaust system, characterized in that the exhaust system (2, 8) is fastened to the gearbox (5, 6) through the exhaust system bracket (21a) which comprises a supporting element (11, 11a) in the form of a plate holder with at least two band-like, elastic plates (11, 11a) which are superimposed so as to form a stack (as shown in Figures 5-7 which clearly illustrates the plates (11, 11a) arranged one on top of the other); and the plates (11, 11a) are able to move relative to each other on at least a part of their length because they are attached by fasteners and not integral. The supporting element has an angular structure as seen in the longitudinal section. The supporting element, as seen in the longitudinal section, has a twofold angular structure in the form of an offset step, as shown in Figure 7. The supporting element, as seen in the longitudinal section, has a fourfold angular structure in the form of two offset steps which are arranged mirror-inverted to each other, as shown in Figure 7. The plates have a smooth surface. The

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plates have a structured surface. The supporting element is fastened to the exhaust system by means of a console. Re claim 18, see Figure 1. As shown in Figure 6, the plates have corresponding cross-sections as seen in a longitudinal section. Re claim 20, as best understood, the bracket (21a) has a first end connected to the gearbox (5, 6) and a second end connected to the supporting element (plates 11, 11a), and each plate (11, 11a) of the supporting element has one plate end connected to the second end of the bracket (21a) and an opposite plate end connected to the exhaust system (2, 8) via supporting fixture (23).

**Aiba**

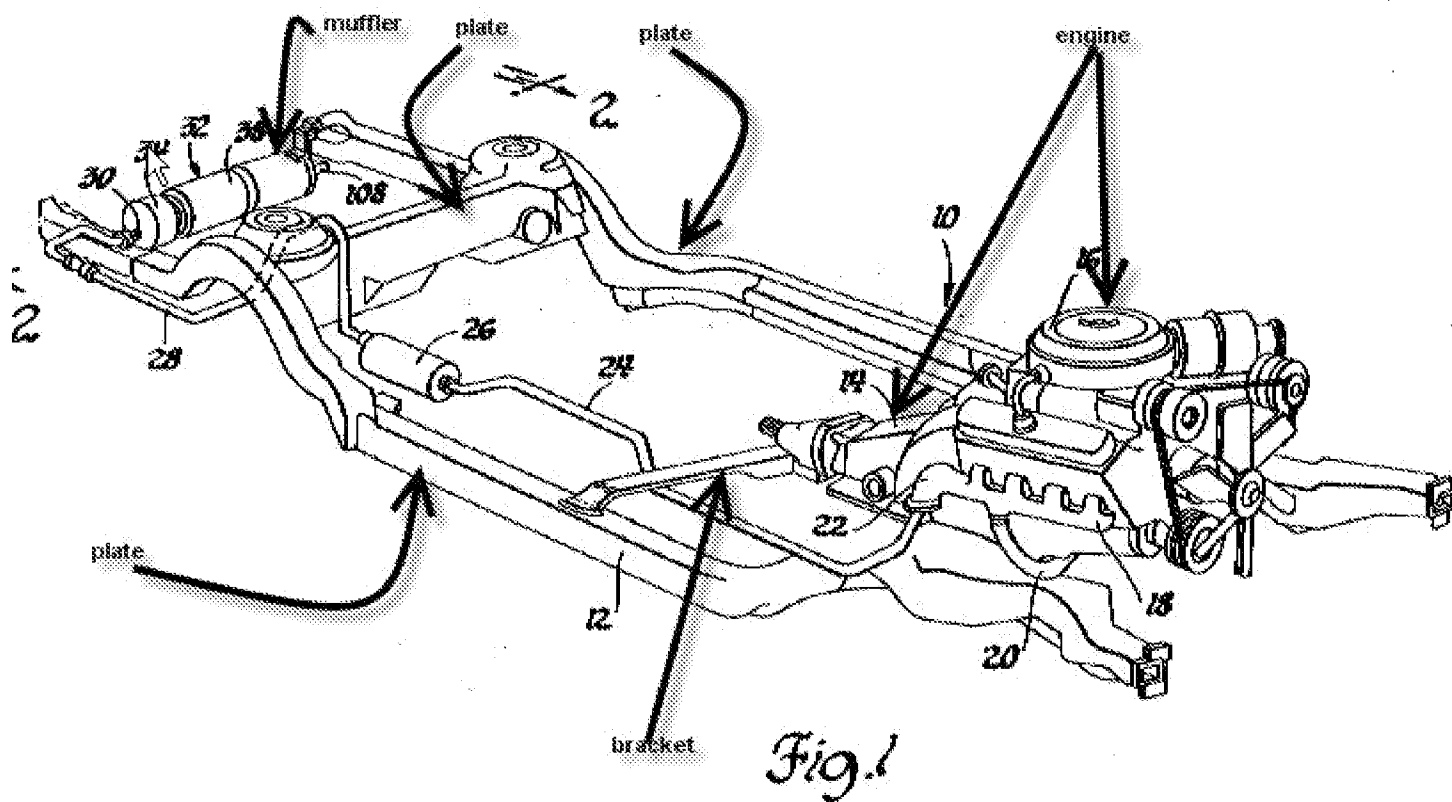
2. Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Aiba (US Patent 4,359,126).

Aiba teaches an exhaust system mounting assembly including: a bracket (8) having a first and second bracket portion, the first bracket portion being adapted to be connected to an engine block (1) and a supporting element (note the separate structure labeled above connecting bracket 8 and component 9 in Figures 2 and 3) including a

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plurality of plates arranged in stacked relationship (one on top of the other), the supporting element having a first end connected to the second bracket portion and a second end connected to an exhaust component (9). The plates have corresponding cross-sections as seen in a longitudinal direction.

LUDECKE.et al.

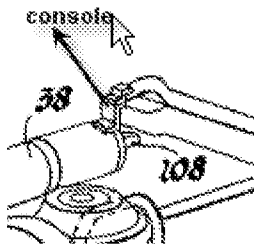


3. Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ludecke et al. (US Patent 4,264,344).

Ludecke et al. teaches an exhaust system mounting assembly including: a bracket (see above) having a first and second bracket portion, the first bracket portion being adapted to be connected to an engine block (14) and a supporting element

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including a plurality of plates (clearly labeled above) arranged in stacked relationship (one on top of the other), the supporting element having a first end connected to the second bracket portion and a second end connected to an exhaust component (muffler). The plates have corresponding cross-sections as seen in a longitudinal direction.



Re claim 23, the assembly includes a console (as shown above) that connects the second end of the supporting element to the exhaust system component. The plates are band-like because they are assembled or united in a group, as defined by the American Heritage Dictionary of the English Language.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-10, 12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada ('599).

Shimada teaches the features described above.

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Shimada lacks the teaching of a helical structure, austenitic material, ferritic material, spring steel, plates made of different materials, plates having a different thickness, plates having a rough surface, plates fastened to each other by screwing, welding or a form-fitting and/or force-fitting connection, a flanged plate, and the teaching of three, four or five plates.

The provision of a helical structure or a flanged plate represents a change in shape which is well within the level of ordinary skill in the art. The use of old and well known materials would have been obvious to one having ordinary skill in the art. The provision of well known fastening methods such as screwing and welding would have been obvious to one having ordinary skill in the art. The provision of three, four, or five plates is an obvious duplication of parts which is well within the level of ordinary skill in the art. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

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Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada ('344).

Ludecke et al. teaches the features described above.

Ludecke et al. lacks the teaching of elastic.

However, the use of elastic material is old and well known. The provision of elastic material to manufacture any of the plates would have been obvious to one of ordinary skill in the art to permit deformation.

### ***Response to Arguments***

6. Applicant's arguments filed May 19, 2009 have been fully considered but they are not persuasive. Contrary to applicant's argument that element 11a in Shimada (US Patent 1,942,599) does not comprise a stacked plate as defined in claim 1, the plates 11 and 11a are shown in Figures 5-7 arranged one on top of the other. Clearly, Shimada ('599) teaches applicant's invention as defined in claim 1.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIDGET AVERY whose telephone number is (571)272-6691. The examiner can normally be reached on Monday-Thursday from 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris, can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/GLENN DAYOAN/  
Supervisory Patent Examiner, Art  
Unit 3612

/Bridget Avery/

Examiner, Art Unit 3618